

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0321 CS
Controlled Substance Excise Tax
For The Tax Periods: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Interest

Authority: IC 6-8.1-10-1.

The Taxpayer protests assessed interest.

III. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on January 7, 1993. The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of marijuana on March 23, 1993.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer argues that the imposition of the Controlled Substance Excise Tax constitutes a punishment and violates the Constitutional provision for protection against double jeopardy. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court found that a controlled substance excise tax assessment was a punishment for purposes of double jeopardy analysis. The Court further stated that the jeopardy attaches when the Department serves the taxpayer with its Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand. In determining which jeopardy is barred as the second jeopardy the relevant dates must be considered.

Taxpayer was presented with the Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand on March 23, 1993. According to records provided by the taxpayer, a guilty plea was not accepted and judgment entered in the criminal prosecution until September 20, 1993. The Department finds, in accordance with the law as stated in Cliff, that the tax assessment and jeopardy came first in time and were not barred by the principles of double jeopardy. The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea agreement.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Interest

DISCUSSION

The taxpayer protests the imposition of interest on its assessment. Indiana Code 6-8.1-10-1 states in pertinent part:

(a) If a person. . . incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment,

(e) Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section.

Therefore, the Department may not legally waive the interest.

FINDING

The taxpayer's protest of interest is denied.

III. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest to penalty is denied.